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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND ROBLES,

Defendant and Appellant.

B229761

(Los Angeles County
Super. Ct. No. KA087616)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Bruce F. Marrs, Judge. Affirmed.

Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

Raymond Robles was convicted of murdering Richard Herrera. On appeal, Robles challenges the trial court's refusal to suppress a covert recording of his incriminating statements about the crime. Appellant was recorded while conversing in jail with two "inmates" who were actually undercover detectives.

Appellant was not deprived of a fair trial in violation of his Fifth Amendment right against self-incrimination or his Sixth Amendment right to counsel, because this was not a "custodial interrogation" within the meaning of *Miranda v. Arizona* (1966) 384 U.S. 436, 444. Appellant was unaware that he was speaking to law enforcement agents and voluntarily described the murder. As a result, his statements are admissible.

FACTS

On July 27, 2007, 20-year-old Raymond Robles attended a barbeque with friends. In the wee hours on July 28, the partygoers drove to a supermarket to buy more beer. Appellant rode in a black Nissan Sentra driven by his long-time neighbor Monica Alfaro; others followed in a Dodge Charger. After Alfaro parked and began to walk toward the supermarket, she heard "a lot of commotion" coming from a group of people in the parking lot. Believing that there was a fight, Alfaro returned to her car.

Alfaro was a recalcitrant witness who expressed concern about being in court, saying "I shouldn't be here." Alfaro could not recall whether she saw fighting, or heard bottles breaking and a gunshot; however, during the initial police investigation, Alfaro spoke reluctantly but more openly about the shooting. Her statements to police were recorded and played for the jury.

During her recorded police interview, Alfaro told officers that she drove appellant, Cesar Gonzales, and Tiffany to the market to buy beer. As Alfaro walked toward the market, a fight broke out in the parking lot. She heard gunshots. She turned and saw Cesar Gonzales on top of a man, fighting. She added, "And Raymond's standing there with a gun pointed down," referring to appellant. He was grasping the gun with both hands. Alfaro and Tiffany returned to the car, followed by appellant, who jumped into the back seat. Gonzales was still on top of the victim, hitting him. Alfaro repeatedly yelled at Gonzales to get in the car, then saw someone come up behind Gonzales and hit

him with brass knuckles. Gonzales finally looked at Alfaro, who told him to get into the car, and he did.

Several independent eyewitnesses left the supermarket just when cars pulled in. About 10 people piled out and a fistfight started. They did not see who started the fight. Nor did they see bottles used as weapons during the fight. One witness saw a gun pulled out and fired, but could not identify the shooter. They ran away to escape the gunfire. Afterward, they saw someone lying on the ground, shot in the chest.

Martin Jimenez went to the supermarket with his life-long best friend Richard Herrera, John Trujillo, and Samuel Quintero. While Jimenez and Quintero waited in the car, Herrera and Trujillo entered the market. Jimenez saw two cars pull into the lot and park nearby, a Nissan Sentra and a Dodge Charger. Herrera returned from the store, got behind the wheel, and began to back out of his parking spot.

As Cesar Gonzales, another man and two girls walked past Herrera's car toward the market, Gonzales and Herrera exchanged words. Trujillo heard Gonzales say to Herrera, "What are you looking at?" Herrera got out, and the two began fistfighting. Neither Jimenez nor Trujillo saw who threw the first punch. A general melee broke out when Jimenez and Trujillo went to help Herrera. Jimenez saw the man traveling with Gonzales holding a gun. By then, only Gonzales and Herrera were still fighting.

Herrera did not have any kind of weapon in his hands. Jimenez called out to Herrera, to warn him about the gun. Jimenez ran for cover when the gunman raised the weapon with both hands and pointed it in the direction of the fight. The gunman hesitated for a few seconds, as if he did not want to shoot, but others were shouting at him to shoot. Jimenez and Trujillo saw fire come from the gun muzzle. At trial, Jimenez and Trujillo identified appellant as the shooter.

Jimenez asked a security guard inside the market to call 911. When Jimenez returned to the parking lot, Gonzales and Herrera were still fighting. Herrera tried to crawl into his car, but Gonzales pulled him back and kicked Herrera's face and chest. Herrera's friends denied using brass knuckles. After appellant left, Jimenez and Trujillo

drove Herrera to the hospital. When the police arrived, they found blood spatters, a bullet casing, one broken beer bottle and multiple unbroken bottles, but no people.

As Monica Alfaro fled the scene after the shooting, appellant gave her instructions on which way to turn, saying that someone was following them. Arriving back at the barbeque, Alfaro heard Cesar Gonzales brag about hitting and “stomping that fool.” Another participant in the fight named Carlos showed Alfaro that his head was bleeding because he had been hit with a bottle. The group went into the garage, and appellant told Alfaro that if anything happened, “you don’t know us,” and “No one got shot, no one . . . was hurt.” At that point, Alfaro believed that the victim was beaten up, not shot. After observing that Gonzales had blood all over his shoes, Alfaro went to her car and saw blood on the floor mats. Gonzales directed her to discard the floor mats instead of washing them. Appellant left with Tiffany, and Alfaro drove home, circling around the crime scene, which was surrounded by police tape.

Herrera died from a bullet wound to his chest. A bullet casing retrieved from the crime scene matched a hollow-point bullet extracted from Herrera’s body, which came from a nine-millimeter semiautomatic handgun. When interviewed by police after his arrest, appellant admitted being present at the supermarket, and admitted that there was a fight between Gonzales and Herrera, but denied any involvement in the shooting.

Appellant took the stand at trial. He recalled the barbeque with his friends, where he consumed four or five beers and some rum. They went on a beer run to the supermarket where they encountered Herrera and his friends sitting in a car, drinking. As appellant approached the supermarket entrance, a scuffle broke out behind him. He turned and saw three men surrounding his friend Cesar Gonzales: one of them struck Cesar with his fists, and another hit Cesar in the head with a bottle. Cesar was trying to defend himself from the attack.

Appellant testified that one of the attackers reached inside his car, and appellant believed he was reaching for a weapon. Appellant lifted up his shirt, pulled out a gun, aimed in a downward manner, and fired one shot. The person he shot was not the one who was reaching into the car: it was the one who hit Cesar with a bottle. Before firing,

appellant did not warn anyone to stop fighting or he would shoot. The length of time between the start of the fight and his gunshot was less than a minute, appellant estimated. He only waited four or five seconds from the time he noticed the fight until he fired the shot. At the time, appellant was scared and somewhat drunk, and now wishes that he had fired a shot into the air. He states, "I simply just wanted to stop the fight." He was carrying the gun to impress his friends, and is not proud of what he did. Appellant is small in stature, and is not a fighter. After firing his weapon, he ran to Monica Alfaro's car and he and his friends drove back to the barbeque.

Appellant stayed at his home for a week, then went to stay with a friend in Barstow. He was arrested two years later. He asked his friends Monica Alfaro, Cesar Gonzales and the others from the barbeque to lie to the police for him. He did not intend to kill anyone.

APPELLANT'S JAILHOUSE CONVERSATION

When appellant was arrested, deputies arranged to have appellant's jail cell wired for sound, and for undercover officers to be in the cell with appellant. Officers Miguel Beltran and Manny Avina posed as inmate gang members and experienced criminals on July 16, 2009, while sharing a cell with appellant.¹ A recording of their conversation was played for the jury.

After appellant greeted Cesar Gonzales as he walked by appellant's cell, Beltran and Avina asked who Gonzales was. Appellant identified Gonzales as his "homie" who was in the car with him and was involved in the fight. Appellant speculated that a woman snitched on him, and opined that everyone in the car should be worried about this case. He hoped that someone got rid of the gun. Beltran urged appellant to "get this shit out, let it out your fuckin' chest so we can put these fuckin' pieces together or you're fucked up," noting that he was "schooled" by others so he did not get caught. Beltran

¹ Officer Beltran has posed as an inmate in some 40 to 60 undercover operations, particularly in murder cases. Sporting a shaved head and a goatee, he described himself (and Avina) as looking "a little unconventional" for law enforcement officers.

suggested that appellant should “get your story straight now. Rehearse it. But you better talk. I can’t help you out if you—you aint gonna fuckin’ be truthful.”

After Beltran said, “So what happened?” appellant disclosed he went to a barbeque with his friends. They drove to a supermarket. A fight broke out behind appellant as he walked across the parking lot, and he saw men who were drinking beer in another car breaking bottles over the heads of his friends. Appellant pulled out a weapon he was carrying—a nine-millimeter “cuete” (gun) with hollow point bullets—and fired. It happened so quickly that appellant believed that the only person who saw him shoot was the victim, who looked right into appellant’s eyes. Appellant estimated that the incident lasted only four seconds, after which he immediately jumped into the Nissan and went home with the others.

Appellant said he acted because “they [were] fucking up my homeboys” and Herrera was the biggest of the assailants. Appellant was 20 feet away from Herrera when he fired, noting that “I actually aimed for his leg.” Appellant blamed Herrera and his friends for starting the brawl: “[T]hose fools were the ones that started everything. Like, if those fools didn’t trip none of that shit would’ve . . . happened.” Afterward, appellant went to Barstow to lay low.

Beltran asked more questions to find out who witnessed the crime. Both Avina and Beltran urged appellant to retrieve the gun and throw it off a pier, to be sure it was gone. They also encouraged appellant to devise a story with Gonzales about the crime. At trial, appellant stated that he was a little intimidated by Beltran, but “I did feel like he was going to help me out,” and he followed Beltran’s advice to deny firing the gun.

PROCEDURAL HISTORY

On November 19, 2009, appellant was charged with the murder of Herrera, and three counts of assault with a firearm against Jimenez, Trujillo and Quintero. He pleaded not guilty to the charges. Appellant’s stance at trial was that he fired one shot at Herrera, while acting in self-defense. He argued that his intent was to stop the fight, not to kill anyone. On October 15, 2010, a jury found appellant guilty of second degree murder while using a firearm. He was acquitted of the assault charges. Appellant sought a new

trial, based on the court's admission of appellant's secretly recorded jailhouse statements. The court denied appellant's request for a new trial. Appellant was sentenced to a term of 40 years to life in prison.

DISCUSSION

Appellant moved to suppress evidence of his July 16, 2009 jail cell conversation with the two detectives posing as inmates. He maintained that admission of his statements at trial would violate his constitutional rights against self-incrimination and to counsel during police questioning. The prosecutor responded that appellant was not entitled to be advised of his rights in this setting, because (1) appellant was unaware that he was in a cell with officers so there was no coercive police interrogation, and (2) he was not charged with a crime at the time he made his admissions of guilt. The court denied appellant's motion to suppress.

A criminal suspect who makes incriminating statements is not entitled to *Miranda* warnings "when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement." (*Illinois v. Perkins* (1990) 496 U.S. 292, 294 (*Perkins*).) In *Perkins*, an undercover officer posing as an inmate was placed in the same cellblock as the defendant, who was suspected of murder. The officer proposed that he and Perkins escape from jail. While refining the escape plan, Perkins described at length the murder he committed, after the officer asked Perkins whether he had ever "done" anybody. The officer did not give *Miranda* warnings before having the incriminating conversation with Perkins. (*Perkins*, at pp. 294-295.)

No *Miranda* warnings are required before an undercover officer asks questions to an incarcerated suspect that may elicit an incriminating response. Such statements are voluntary, "and there is no federal obstacle to their admissibility at trial." (*Perkins*, *supra*, 496 U.S. at p. 300.) "*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner. . . . Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*'s concerns." (*Id.* at p. 297. Accord: *People v. Williams* (1988) 44 Cal.3d 1127, 1141-

1142 [*“Miranda . . . has never been applied to conversations between an inmate and an undercover agent”*]; *People v. Webb* (1993) 6 Cal.4th 494, 526-527.) In short, “*Miranda* was not meant to protect suspects from boasting about their criminal activities in front of persons whom they believe to be their cellmates.” (*Perkins, supra*, 496 U.S. at p. 298.) Finally, because no murder charges had been filed against Perkins when he incriminated himself, his constitutional right to counsel did not attach. (*Id.* at p. 299.)

The trial court properly admitted appellant’s jailhouse statements to Officers Beltran and Avina. Appellant believed the men were inmates, and was not coerced into disclosing details about the crime when they asked what happened. Appellant thought that the two were helping him to cover up the crime and devise a story to tell the police. His statements were voluntary. At the time he made the statements in July 2009, appellant had just been arrested; he was not charged with the murder until November 2009. Appellant’s constitutional rights were not violated when he spoke freely in a jail cell about the events leading to his arrest. There is no indication—either from the transcript or elsewhere—that appellant was threatened by either Beltran or Avina. Appellant was simply encouraged to speak, and he did.

While Beltran is an imposing, tattooed fellow, he played the role of appellant’s befriender. He told appellant, “I can’t help you out if you—you ain’t gonna fuckin’ be truthful. You know what I mean?” This was not implied threat. Beltran offered to help appellant, who could have either declined to speak or fabricated a story. Instead, appellant spoke honestly in describing the fight and the shooting, offering the insight that he was only trying to shoot Herrera in the leg. During his subsequent police interrogation, appellant admittedly followed Beltran’s advice, saying that he was not involved in the fight and did not fire the gun. If anything, the taped conversation may have worked in appellant’s favor, by showing that the killing was not willful, deliberate, or premeditated.

The court looks at the totality of the circumstances surrounding an interrogation to determine whether a defendant’s will was overborne. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226; *People v. Hogan* (1982) 31 Cal.3d 815, 841.) It is only where a

police subterfuge is likely to coerce a confession that a due process violation results. (*Colorado v. Connelly* (1986) 479 U.S. 157, 167; *People v. Mickey* (1991) 54 Cal.3d 612, 649-650. “[I]t is difficult to perceive how the failure to brief a suspect on the official plan for an interrogation can constitute coercion for purposes of the due process clause.” (*People v. Chutan* (1999) 72 Cal.App.4th 1276, 1280, 1282.)

Contrary to appellant’s contention, the police subterfuge did not create an unreliable result that rendered his trial fundamentally unfair. The circumstances in this case were not coercive. Appellant spoke openly to his “fellow inmates,” with only slight encouragement from them. No threats were uttered during the exchange. Appellant’s will was not overborne by the deception.

Finally, any error in allowing appellant’s recorded admissions was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Cahill* (1993) 5 Cal.4th 478, 509-510.) All of the testimony pointed to one gun and one shooter. Appellant’s friend Monica Alfaro told police that she heard a gunshot and saw appellant “standing there with a gun pointed down” toward Herrera. Jimenez and Trujillo also identified appellant as the shooter. No one testified that appellant’s life was in danger when he pulled the gun and fired. Herrera was unarmed. Appellant did not tell detectives during his formal police interrogation that he saw anyone reaching into a car for a weapon, and feared for himself or others. There was ample evidence of guilt, even without appellant’s jail cell admissions.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.